THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.122 OF 2017

ORDER:

This petition is filed under Section 438 of Criminal Procedure Code (for short "Cr.P.C.") by accused Nos.1, 2, 4, 5, 6, 7 and 8, apprehending their arrest, in Crime No.124 of 2016 on the file of IV Town Police Station, Nellore, registered for the offence punishable under Section 420 read with 34 of Indian Penal Code (for short "I.P.C.") to direct the Station House Officer, IV Town Police Station, Nellore to release them on bail in the event of their arrest in connection with the above crime.

Defacto complainant D.Chinna Srinivasulu Reddy, Proprietor of Sri Aqua Tex, Nellore City, lodged a complaint with the police stating that during the course of his business dealings in selling Maida, Soya Seed Oil etc., he contacted Rasex Traders, Mumbai for business purposes (petitioners herein are directors and managing directors of Rasex traders). It is further alleged that in the month of September, 2013 he placed an order for supply of 1500 Tons of Soya De-oiled Cake @ Rs.32,000/- per ton and they have supplied the said goods through Gowri Agrotech Private Limited, Jaina, Maharastra and credited the said amount into their account and he received 494.8 Tons of goods from Lathuru Solvent Extractions Private Limited. He further alleged that subsequently he has been placing orders for supply of goods and he had been receiving the said goods and transferred the amount in the name of Gowri Agrotech Private Limited, Lathuru Solvent Extractions Private Limited, Vybhave Trades etc., There were dealings between the defacto complainant and the above companies regarding supply to the defacto complainant and payments made to them.

Lathuru Solvent Extractions Private Limited have demanded to pay the balance amount of Rs.125.13 lakhs and defacto complainant gave details of his payments to them. The other transactions of the petitioners with the other companies are nothing to do with the petitioners firm by name Rasex Traders, Mumbai. But finally claimed that the petitioners are cheated him to a tune of Rs.1,18,50,000/-. Basing on the above complaint, police registered the crime and issued the F.I.R. for the offence punishable under Section 420 read with 34 of I.P.C.

The present petition is filed alleging that the complainant has filed a suit in O.S.No.218 of 2015 on the file of I Additional District Judge, Nellore against Rasex Traders and M/s. Gowri Agrotech Private Limited represented by its Director Subodh Siva Narayana Mantry for recovery of a sum of Rs.1,44,90,958.90 ps. Defendant No.1 – Rasex Traders, to which the petitioners are directors filed their written statement and contesting the suit. Rasex traders is only a broker dealing in Agri. Booking and to connect buyer and seller according to their requirement with a written confirmation and contract note send to seller with a copy to buyer and if any changes, they would be informed them in writing Thus, Rasex Traders is only a broker and not responsible for any financial or other liabilities.

Defacto complainant approached Rasex Traders, entered into a contract dated 30.09.2013 for supply of 100 M.Tons of Soya Been meal @ Rs.32,000/- per Ton. Accordingly, the supply was made through Lathuru Solvent Extractions Private Limited and they have received the said amount. Thus, the transaction between the petitioners and defacto complainant was completed. The other transactions with other companies referred in the complaint have nothing to do with the petitioners and those dealings are according to the wishes of the defacto complainant, but the defacto complainant lodged complaint converting the civil dispute into criminal complaint against these petitioners and others, who have nothing to do with the dealings with the other companies and prayed to grant pre-arrest bail.

During pending of the criminal petition, Sri D.Chinna Srinivasulu Reddy was impleaded as respondent No.2 as per orders dated 27.01.2017 in Crl.P.M.P.No.577 of 2017, who in turn filed counter denying the material allegations while reiterating the allegations made in the complaint. It is specifically alleged that the petitioners herein connected with Rasex Traders, Mumbai and in the year 2013, defacto complainant requested Rasex Traders to purchase Soya DOC and he was informed that a quality material of Soya DOC at the rate of Rs.33,000/- per ton is available and requested them to purchase the said material to a tune of 500 Metric tons @ Rs.32,000/- per ton and informed the same to the Rasex Traders. They in turn have informed that he has to pay an advance of Rs.25.00 lakhs and he accepted the said condition and they in turn asked him to transfer the said amount to HDFC Bank account pertaining to Gowri Agrotech products Private Limited, Jalana, Maharashtra. An amount of Rs.20 lakhs was transferred on 27.09.2013 and an amount of Rs.5 lakhs on 01.10.2013 on confirming the amount, they have sent confirmation order for 100 tons of Soya De-oiled Cake From 01.10.2013 to 18.10.2013, he received a quantity of 494.8 tons of raw material and the bills came through Lathuru Solvent Extractions and they have raised objection for sending the material from other agency and asking to transfer amount to another account @ Rs.34,000/- per ton instead of Rs.32,000/- per ton in respect of the same material. At that stage, he was informed that Gowry Agro Products Private Limited, Lathur Solvent Extractions Pvt. Ltd. and Vaibhav Traders, Mumbai belong to one company and they are sister concerns and there may not be any problem. By believing the version of the Rasex Traders, he transferred an amount of Rs.30 lakhs to Lathuru Solvent, Rs.1 Crore to Gowry Agro Tech and Rs.18,50,000/- to Vaibhav Traders on various dates and the details are mentioned in the complaint filed by him. After a period of six months, the Lathur Solvent Extraction Private Limited informed that he was due to pay an amount of Rs.1,25,13,625/- towards consideration for material supplied through Rasex Traders and for which the amount was already paid as per the instructions of Rasex Traders. On the ground that he has not paid the amount, the Lathur Solvent Extraction Private Limited filed a criminal case against the petitioners and also included him as an accused. In the said case, he has agreed to pay the amount in installments and paid Rs.85,13,625/- till date out of Rs.1,25,13,625/-. He further alleged that the amount paid by him through Rasex Traders for the product supplied by Lathur Solvent Extraction Private Limited was appropriated by the company for other dues of Rasex Traders without his consent. He further alleged that Rasex Traders, Gouri Agro Tech Products Private Limited and Vaibhav Traders have taken amounts from him and cheated him.

During hearing, learned counsel for the petitioners drawn the attention of this Court to the correspondence i.e. letters between the defacto complainant and petitioners herein being brokers or mediators in the business. As per the said letters the seller is M/s.Latur Solvent Extraction Private Limited and buyer is M/s Sree Aquatech. Letter dated 30.09.2013 was addressed by E-mail to “Molly Johny, Rasex Traders” to “Latur Solvent”, likewise there are several letters on the same day regarding supply and details of the product. These, documents are not agreements, in fact they are only correspondence between the parties regarding supply and at best the Rasex traders acted as mediator for supply between M/s.Latur Solvent Extraction Private Limited and Sree Aquatech. The account copy produced before this Court would show that the defacto complainant paid amounts directly to M/s.Latur Solvent Extraction Private Limited and the petitioners only received commission. But this document is of no use.

Learned counsel for the petitioner mainly contended that the petitioners are only brokers and they have nothing to do with all the affairs of M/s.Latur Solvent Extraction Private Limited and other agencies except with the transaction between M/s.Latur Solvent Extraction Private Limited and defacto complainant. Therefore, the petitioners are not liable for payment of the amount and the allegations made in the complaint would not constitute any offence on its face value and prayed to enlarge the petitioners on bail in the event of their arrest.

Learned counsel for the respondent No.1 would contend that the petitioners played fraud on the defacto complainant and transferred the amounts to other companies without paying the same to the concerned traders, which would directly amount to fraud and cheating and the punishable under Section 420 of I.P.C. Hence, they are not entitled to pre-arrest bail and prayed to dismiss the petition.

Undoubtedly, the material produced before this Court would show that there were dealings between the Rasex Traders represented by the petitioners, but according to the petitioners the said Rasex Traders is only a mediator or broker arranging seller to the buyer and not concerned with the transaction regarding payment and supply. But as seen from the material on record, there were 10 transactions evidencing the payment of amount directly by the respondent No.2 herein through Axis Bank and State Bank of India, Nellore to the petitioners herein. Thus, the allegation that the petitioners are no way concerned with the offence is appears to be false, but such matter has to be investigated into by the investigating agency because the Rasex Traders represented by the petitioners made the defacto complainant to part with huge amount for supply of material in the business. Hence, at this stage it is difficult to conclude prima facie that the petitioners did commit no offence, which is *sinqua non* for grant of pre-arrest bail to the petitioners.

It is evident from the material in the complaint, there were, admittedly, transactions between the parties. But whether the petitioners are brokers or not is to be investigated and specific act of each director has to be investigated and the total transactions are based on the accounts maintained by both the parties and in case the petitioners are enlarged on pre-arrest bail, there is every possibility of petitioners interfering with the further investigation. At this stage, it is difficult to enlarge the petitioners on pre-arrest bail. Consequently, the petition is liable to be dismissed.

In the result, the petition is dismissed. No costs.

The miscellaneous petitions pending, if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

08.03.2017
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